REMARKS

This amendment responds to the office action mailed December 13, 2005. Claims 1-50 are currently pending. Independent claim 1, 17, 32 and 46 have been amended to highlight distinguishing features and for readability. Dependent claims 4, 6, 11-15, 18, 21, 26-30, and 33-45 have been amended for readability and for conformity with their respective independent claims. New claims 47-50 have been added. Reconsideration is respectfully requested.

Amendment to the Specification

The specification has been amended at paragraphs 0019, 0026, 0034, 0039, 0046, 0047, 0049 and 0063 of the published application to correct various minor typographical, grammatical and reference numeral errors that would be readily apparent to one of ordinary skill in the art in view of the associated application text and figures.

Rejection under 35 U.S.C. § 101

The Office Action includes a rejection of claim 46 under 35 U.S.C. § 101 as allegedly being drawn to non-statutory subject matter. The preamble of claim 46 has been amended to address the rejection. Withdrawal of the rejection is respectfully requested.

Art Rejections

The Office Action includes a rejection of claims 1-3, 5-16, 17, 19-31, and 32-45 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Perlman et al. (US Patent No. 5,978,381) in view of Wu et al. (US Patent Application Publication No. 2002/0198963). The Office Action further includes a rejection of claims 4 and 18 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Perlman et al. and Wu et al., and further in view of Sampath et al. (US Patent No. 6,266,774). Independent claims 1, 17, 32 and 46 have been amended, and Applicant respectfully submits that claims 1-46 are not obvious in view of the applied references.

Claim 1 as amended recites a system for dynamic scheduling of broadcast digital data content to client devices, the digital data content available from one or more sources, and the scheduling based on type of data and activity of said system. The system comprises a digital

radio broadcast system comprising one or more gateways, said one or more gateways being configured for receiving and intelligently broadcasting one or more selections of digital data content. The one or more gateways comprise a scheduler for receiving said data content. The scheduler is configured for separating said received content into a first data type and a second data type, scheduling said first data type to be broadcast via digital radio transmission to said client devices during selective first broadcast periods, and scheduling said second data type to be broadcast via digital radio transmission to said client devices during selective second broadcast periods. The data content is enabled for use during a scheduled time period after a recombination of said broadcasted first data type and second data types at said client devices.

Even if, for the sake of argument, the disclosures of Perlman et al. and Wu et al. were combined as suggested by the Office, the resulting hypothetical combination would not possess the combination of features recited in claim 1. Perlman et al. does not disclose a system for dynamic scheduling of broadcast digital data content to client devices that comprises a digital radio broadcast system, as recited in claim 1. Rather, Perlman et al. is directed to networked computer systems wherein high bandwidth network content is transmitted on low bandwidth communications channels during off peak hours (see, e.g., col. 1, lines 5-10, and Figs. 1B and 2B). Also, col. 10, lines 27-64 relied upon by the Office clearly relates to multicasting over the Internet, not to a digital radio broadcast system. Perlman contains no disclosure of a digital radio broadcast system as recited in claim 1.

Wu et al. is directed to a method for use in a browser to schedule downloads of documents from servers in a networked environment at a specified time, for a specified duration, and with a specified time interval (see, e.g., Abstract). The Office relies upon Wu et al. for allegedly disclosing a method for a user to schedule automatic downloads (Office Action at pp. 3-4). Wu et al. does not disclose a digital radio broadcast system, and the Office's reliance upon Wu et al. does not make up for the deficiencies of Perlman et al. Accordingly, even if Perlman et al. and Wu et al. were combined as suggested by the Office, for the sake of argument, the hypothetical combination would not possess the combination of features recited in claims 1.

Applicant notes that the Office has rejected claim 14, which depends from claim 1 and which recites that the client is a digital consumer electronics radio, as allegedly being obvious in view of Perlman et al. and Wu et al.. The rejection is made on grounds that the type of client device would allegedly have been a matter of choice and that it allegedly would

have been obvious to apply the method of Perlman et al. to a digital radio client device because it would have enabled a user to have access to high bandwidth content on the go (Office Action at pp. 5-6). Applicant submits that the Office's comments with regard to claim 14 do not address the fact that claim 1 recites a digital radio broadcast system. The Office's statement regarding what types of client devices might be desirable, for which no prior art citation is provided, does not provide a credible basis for suggesting that one of ordinary skill in the art would have been motivated to transform the Internet multicasting system of Perlman into a digital radio broadcast system, having the features recited in claim 1.

For at least these reasons, Applicant respectfully submits that claim 1 is patentable over the applied references. Withdrawal of the rejection and allowance of claim 1 are respectfully requested.

Independent claims 17 and 46 recite, among other things, broadcasting via digital radio transmission to one or more client devices first and second data types. Claim 32 recites, among other things, receiving first data content from a digital radio broadcast source. Accordingly, these claims are allowable for reasons similar to those set forth with regard to claim 1. Withdrawal of the rejections and allowance of claims 17, 32, and 46 are respectfully requested for at least this reason.

Dependent claims 2-16, 18-31, and 33-45 are allowable at least by virtue of dependency. Withdrawal of the rejection and allowance of these claims are respectfully requested.

New Claims 47-50

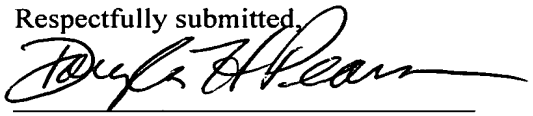
New claims 47-50 have been added to round out the scope of protection sought. It is believed that these claims are also patentable over the applied references, and allowance of the same is respectfully requested.

Conclusion

In light of the above amendments and remarks, the Applicant respectfully requests that the Examiner reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney if a telephone call could help resolve any remaining items.

Respectfully submitted,

Date: May 15, 2006



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